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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/648,609

08/26/2003

Irene Dris

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23413 7590 09/08/2008
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EXAMINER

ANGEBRANDT, MARTIN J

ART UNIT

PAPER NUMBER

1795

MAIL DATE

DELIVERY MODE

09/08/2008

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

**Advisory Action
Before the Filing of an Appeal Brief**

Application No.

10/648,609

Applicant(s)

DRIS ET AL.

Examiner

Martin J. Angebranndt

Art Unit

1795

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 27 August 2008 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☐ The period for reply expires _____ months from the mailing date of the final rejection.
b) ☒ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☒ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
(a) ☒ They raise new issues that would require further consideration and/or search (see NOTE below);
(b) ☒ They raise the issue of new matter (see NOTE below);
(c) ☒ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: See Continuation Sheet. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☐ Applicant's reply has overcome the following rejection(s): _____.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☒ For purposes of appeal, the proposed amendment(s): a) ☒ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
The status of the claim(s) is (or will be) as follows:
Claim(s) allowed: none.
Claim(s) objected to: none.
Claim(s) rejected: 1-6,9,11-14,16-18,20-33,35-38,40-42 and 44.
Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:
See Continuation Sheet.
12. ☐ Note the attached Information *Disclosure Statement*(s). (PTO/SB/08) Paper No(s). _____.
13. ☐ Other: _____.

/Martin J Angebranndt/
Primary Examiner, Art Unit 1795

Continuation of 3. NOTE: in claim 33, the limitation regarding the thickness of the optical layer and the the substrate thickness were not previously considered with respect to this claims. The language describing the poly(arylene ether) as being atactic polystyrene is new matter. atactic polystyrene is a poly(alkenyl aromatic) (see prepub at [0037], but is not an poly(aromatic ether) as it has no oxygen this would be NEW MATTER as it was not previously described in the specification. Further none of the claims under prosecution recited atactic polystyrene. .

Continuation of 11. does NOT place the application in condition for allowance because: The reproduction ability is primarily based upon the material and the use of polyarylene/polystyrene is forming optical recording media (ORM) substrates with "dimensional stability" is known as evidenced by Niwano et al.. Further, there is clearly a benefit with regard to the reproduction/molding accuracy from the use of melt filtering with respect to forming ORM substrates as small particles would be able to pack closer and conform better to a surface. The applicant argues the tilt, (which is only an issue for claims 28,33 and 40, where it is recited) which is related to the dimensional stability and the balance of forces on either side of layers which are not moisture permeable. claims 28,33 and 40 fail to recite the requisite a data or reflective layer. The applicant argues that the references are diverse teachings. This is not the case as all the references relate to optical recording media and particularly optical recording media substrates. The applicant's representative refers to "significant research", but there are only four comparative examples, with comparative examples 1 and 4 not relating to the primary reference, but using other materials (Bisphenol A and another polycarbonate) and comparative examples 2 and 3 discuss the effects of filtering of particulates, which clearly is going to have an effect on the ability of the resin to reproduce the mold surface. If the applicant wishes to rely upon the molding conditions (claim 1,33,38,44) and argue the replication, then data showing the effect of changing these conditions should be on the record. The applicant's arguments treat the references piecemeal and fail to appreciate the clear advantages in storage capacity derived from having more tracks with narrower pitches. More data is a clear advantage to one of ordinary skill in the optical data storage art. The applicant's reading of Niwano on pages 13-14 of the response fails to appreciate that the reference is not discussing impurities, but the size of the solid polymers in the melt, which is preferably on the molecular order which contrary to the applicant's position teaches any particulate polymer materials as being 1 micron or less in size, which is below the recited limits of the claims of 15 microns as an upper range. Clearly melt filtration is congruent with the teaching. The closest art is Niwaono, not the other references. As discussed above, the applicant might have unobvious advantages from the processing, but this is not clear from the comparative examples and Hashizume teaches the desirability of replication at 90% or better for optical recording media substrates. The "optical layer" is the protective layer of Ohgo '671, which shows similar layers to Niwano et al. and the irradiation of the medium through this layer and the other dielectric layers. This layer clearly provides protection to the underlying layers. The applicant's arguments with regard to tilt fail to appreciate that organic materials will swell and the use of a thinner layer (0.1 mm), rather than a (0.6-1.2 mm) reduces the amount of force resulting from this expansion. The applicants' argument with respect to KSR are flawed at best, failing to appreciate the common sense results of filtering and the establishment by the examiner of the molding conditions recited as known in the art and the desirability of high accuracy in reproduction in the art. The applicant's argument suggests that the rigid TSM must be applied. This position was in fact rejected by the Supreme Court. The arguments with respect to Satio et al (page 19) and combined with Ueda, Ito and Ogawa (page 20) are again piecemeal and fail to account for the fact that the rejection is based upon a plurality of references. Of the independent claims, none recite a moisture impermeable layer which is necessary for tilt and only claim 33 recites tilt, so the argued position is not commensurate with the scope of coverage sought. The applicant's characterization is Feist is remarkably vague and fails to appreciate that melt filtration is taught, which leads one to the teachings of Daecher et al.. Again the applicant fails to recognize the protective layer of the prior art is the "optical layer" of the claims. The Feist reference has more of the features, so to argue that it is further from the instant claims is ridiculous on its face. Perhaps this is due to the assignment to the same assignee as the instant application. The response to the ODP rejections are merely bald statements .